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JAMES H. McKENNEY,
CLERK.

No. 1909

Supreme Court of the United States.

EX PARTE A. HOWARD RITTER, EXECUTOR OF THE ESTATE OF WILLIAM M. RUNK, DECEASED.

Petition for a writ of *certiorari* requiring the Circuit Court of Appeals for the Third Circuit to certify to the Supreme Court of the United States for its revision and determination the writ of error taken by A. Howard Ritter, executor of William M. Runk, deceased, a resident of the State of Pennsylvania, plaintiff in error, *vs.* The Mutual Life Insurance Company of New York, a corporation of the State of New York.

JOHN HAMPTON BARNES,
RICHARD C. DALE,
GEO. TUCKER BISPHAM,
For Petitioners.

Allen, Lane & Scott, Prs., Phila.

In the Supreme Court of the United States.

October Term, 1895. No. .

Ex parte A. HOWARD RITTER, EXECUTOR OF THE ESTATE OF WILLIAM M. RUNK, DECEASED.

Petition for a writ of *certiorari* requiring the Circuit Court of Appeals for the Third Circuit to certify to the Supreme Court of the United States for its revision and determination the writ of error taken by A. Howard Ritter, executor of William M. Runk, deceased, a resident of the State of Pennsylvania, plaintiff in error, *vs.* The Mutual Life Insurance Company of New York, a corporation of the State of New York.

To the Honorable the Supreme Court of the United States:

The petitioner of A. Howard Ritter respectfully represents:—

That he is the executor of William M. Runk, deceased, and a resident of the State of Pennsylvania. The defendant in error is the Mutual Life Insurance Company of New York. An action was brought by the petitioner in the Circuit Court of the United States for the Eastern District of Pennsylvania upon certain policies of insurance upon the life of William M. Runk issued by the said Mutual Life Insurance Company of New York.

At the trial of the case in the Circuit Court it appeared that William M. Runk had, upon the fifth day of October, 1892,

committed suicide. The defendant, the insurance company, refused to pay the amount of the policies. There was no provision in any of the said policies in regard to suicide of the insured.

At the trial of the case the court affirmed a point submitted by the defendant, as follows:—

"There can be no recovery by the estate of a dead man of the amount of policies of insurance upon his life if he takes his own life designedly whilst of a sound mind."

There were certain other defenses made by the defendant; but even if the jury had found against the defendant upon the ground set up therein, it would still have been compelled by the instruction of the court as above stated to find a verdict for the defendant.

This instruction of the Circuit Court was affirmed in the opinion filed in the Circuit Court of Appeals, to the effect that mere suicide of the insured, where there is no provision in the policy in regard thereto, is of itself a sufficient defense upon any action brought upon the policy by the representatives of the deceased.

It was conceded at the trial of the case and in the argument, and in the opinion filed by the Court of Appeals, that this precise question had not been decided in any case prior to this case.

Just at the time of the decision in this case by the Court of Appeals the decision was published in the case of the Ætna Life Insurance Company *vs.* Florida, in the Circuit Court of Appeals for the Eighth Circuit, reported in vol. LXIX., Fed. Rep., page 932. In that case a statute of Missouri providing that suicide should not be a defense to any action upon a policy of insurance unless the same were taken out in contemplation of suicide, was sustained. It therefore follows that the Circuit Court of Appeals for the Third Circuit having decided that suicide of itself is a fraud, a contract providing that suicide should not vitiate the policy would, in the judgment of that court, be against public policy, while the Circuit Court of Appeals for the Eighth Circuit has sustained a statute creating a defense based upon a precisely opposite conclusion

Your petitioner files herewith, as required by rule 37, a certified copy of the entire record of the case in the Circuit Court of Appeals, and respectfully shows to your Honorable Court that the question involved is one of such gravity and importance as to justify to your Honorable Court an application to require the record of the said proceeding to be certified to the Supreme Court for its review and determination.

The question is one of general public interest, and of the greatest possible importance throughout the Union. It has never been decided by this court. In the present conflict of authority there exists an uncertainty touching the proper interpretation of one of the most important and most common contracts into which the citizens of this country enter. It is of vital consequence to the entire community of these United States that the law upon this subject should be definitely settled by the highest authority.

UNITED STATES OF AMERICA,
ESTERN DISTRICT OF PENNSYLVANIA, } *ss.*

This day personally appeared before me, a United States Commissioner for the Eastern District of Pennsylvania, A. Howard Ritter, plaintiff below, and plaintiff in error in the Circuit Court of Appeals for the Third Circuit in the above-entitled cause, and having been duly sworn, did depose and say that he has read the foregoing petition, and that the facts therein stated are true to the best of his knowledge, information, and belief.

Sworn and subscribed to before me, this day of January, 1896.

[SEAL] *United States Commisstioner for the Eastern District of Pennsylvania.*

BRIEF OF ARGUMENT IN SUPPORT OF PETITION.

The question raised by the record is whether a policy of insurance taken out for the benefit of the estate of the insured, with no clause or condition limiting the obligation of the company to pay if the insured commits suicide, is avoided by the fact that the insured commits suicide under the pressure of subsequently-occurring misfortunes.

The learned judge who tried the case correctly stated that this precise question has never heretofore arisen and been decided in any court, but in a leading case, in which the question did not directly arise upon the record, the Supreme Court of the United States has expressed the opinion that suicide, without a condition or clause so providing, does not avoid a policy of life insurance, and expressed their disapprova of a dictum of Chief Justice Black while in the Supreme Court of Pennsylvania which seems to support the other view. It is to be noted, however, that the language of Chief Justice Black was predicated of a case where the insured committed suicide within twenty-four hours after effecting the policy of insurance by taking arsenic purchased on the same trip into the city of Harrisburg during which his policy was taken out. All the circumstances of the case indicated a purpose to commit suicide formed prior to the making of the contract, in which case no one doubts that the contract is tainted with fraud in its inception, and it was upon this state of facts, and upon a policy which was by its expressed terms void if the deceased died by his own hand, that in Hartman *vs.* Keystone Ins. Company, 21 Pa. St., 466, Black, C. J., said :—

> "The conditions of the policy are that it shall be null and void 'if the assured shall die by his own hand, in or in consequence of a duel or by the hands of justice,' &c. The plaintiff argues that the first clause here quoted does not embrace suicide committed in swallowing arsenic. Where parties have put their contract in writing their rights are fixed by it. But the contract is what they meant it to be, and when we can ascertain their meaning from the words they have used, we must give it effect. One rule of interpretation is, that we must never attribute an absurd intent if a sensible one can be extracted from the writing. No absurdity could be greater

than a stipulation against suicide in a duel. The words 'die by his own hand' must therefore be disconnected from those which follow. Standing alone, they mean any sort of suicide.

"Besides this, the court was very plainly right in charging that if no such condition had been inserted in the policy, a man who commits suicide is guilty of such a fraud upon the insurers of his life that his representatives cannot recover for that reason alone."

The report of the case does not give the charge of Judge Pearson in the court below, but it may be assumed that the charge was given in connection with the undisputed facts of the case, which necessitated the conclusion that the suicide was simply the carrying out of the preconceived fraudulent intent with which the policy was procured. And this case (Hartman *vs.* Insurance Company) has not been followed by the Supreme Court in any case in Pennsylvania, but, on the contrary, has been expressly limited in the only case in which the subject was touched upon. American Life Insurance Co. *vs.* Isett's Admrs., 74 Pa., 176 (1873). "The case of Hartman *vs.* Insurance Company is not in conflict with the charge of the court. It merely holds if the insured committed suicide by swallowing poison he died by his own hand. It does not profess to hold that self destruction by the insured in all cases avoids the policy."

In Life Insurance Company *vs.* Terry, 15 Wallace, 580, which was the leading case in which the Supreme Court repudiated the English rule of Borradaile *vs.* Hunter, and held that even if the policy contained a clause against suicide or death by his own hand, such clause did not apply if the insured was insane, Mr. Justice Hunt thus criticises the language of Judge Black, above quoted:—

> "In Hartman *vs.* Keystone Insurance Company, the doctrine of Borradaile *vs.* Hunter was adopted with the confessedly unsound addition that suicide would avoid a policy although there were no condition to that effect in the policy."

The plaintiff in error is therefore justified in asserting that upon the question raised by the petition this court has already stated its understanding of the law in accordance with the view for which we contend, and its disapproval of the expressions of Chief Justice Black as an unsound

addition to the rule even as adopted in the Engish courts. Until, therefore, the supreme tribunal shall modify its statement of the law as thus announced in Terry's case, the Federal courts will regard themselves bound by such statement, even though individual judges, if the question were a new one, might entertain different opinions. We believe, however, that the rule as stated by Mr. Justice Hunt in Terry's case to be in accordance with the true view of the nature of the contract; with the practice of insurance offices; and with the rule adopted in a large number of cases which, while they may not raise the precise question before the court, are not distinguishable in principle.

In Darrow *vs.* Family Fund Society, 116 N. Y., 542, the court said:—

> "It was alleged as a defense that the defendant offered to prove on the trial that the member, Darrow, died from the effects of poison taken by him, and which was administered by him with the intent to take his own life. The evidence was excluded, and exception taken. The fact that he committed suicide was no defense unless it came within some condition of the contract of insurance relieving the defendant from liability in such case."

The court then proceeded to consider whether the suicide came within a clause that the policy—

"Should be void if the member shall die in violation of or attempting to violate any criminal law of the United States or of any State or county in which the member herein named may be," saying:—

> "It must for the purpose of the question here be assumed that Darrow had the purpose of taking his own life, and that he fully accomplished such purpose. The result of his act, influenced by such intent, then was his death. By the act of taking his own life he violated no criminal law, unless the attempt to do it may be distinguished from the act accomplished. An act is characterized by the purpose, when ascertained, of the party doing it or by its result. If the act fails to accomplish its purpose it constitutes an attempt, but if the result of it is the consummation of the purpose, the act is not commonly designated as an attempt. The common acceptation of terms used, and which do not necessarily have

a technical meaning, is entitled to some consideration in the construction of contracts where the intention of the parties is sought for, as it must be in the language employed. For the purpose of upholding the contract of insurance its provisions will be strictly construed as against the insurer.

"The conclusion is that the death of the member by suicide did not, within the meaning of any provision of the policy, render it for that reason void, and therefore the exclusion of the evidence upon that subject was not error. No other question requires the expression of consideration."

See also following the above case Meachem *vs.* The Assn., 120 N. Y., page 237.

In Kerr *vs.* Minnesota Mutual Benefit Association, 39 Minn., 174, the policy of insurance provided:—

"If the assured shall die in or in consequence of the violation of any criminal law of any country, State, or Territory in which the assured may be, this certificate shall be null and void."

It was held that suicide committed by an alleged fugitive from justice to avoid arrest and trial for a crime committed by the assured, is not to be considered as the proximate result of the alleged crime, and that his death by suicide is not within the proper meaning of the policy to be considered as the violation of law therein referred to. The court further said:—

"In the law of insurance suicide is not, as a rule, recognized as a ground of exemption from liability, or for the forfeiture of a policy issued for the benefit of a third person, unless it is expressly so provided in the policy."

In Mills *vs.* Rebstock, 29 Minn., 380, the constitution and by-laws of a mutual benefit association organized to secure the benefit of life insurauce to the heirs of deceased members on the death-assessment plan, and which issues no policies, stand in the place of a policy, and where such constitution and by-laws contain no provision qualifying the right of recovery in case of suicide, the heirs of a member are entitled to recover the amount stipulated, irrespective of the mode of his death.

In Northwestern Association *vs.* Wanner, 24 Ill. App. Court Rep., 357, a policy having been issued by a mutual association without a suicide clause, it was held that it was not competent for the association, by a subsequent by-law, to exempt itself from liability in case of suicide.

In Cook on Life Insurance, section 41, the effect of self destruction, when not provided against in the policy, is stated as follows:—

> "If the performance by the insurer is, in general terms, conditioned on the death of the insured, there seems no valid reason why death by committing suicide should not be included, and such is the general doctrine. *A fortiori* is this true of self destruction by an insane person, but this rule is subject to the reasonable limitation that one effecting insurance with intent to commit suicide, the committing of suicide in pursuance of such intent is guilty of fraud that will avoid the contract, even though it contain no provision as to suicide. Contracts of insurance have very commonly contained provisions excepting from the risk death by suicide."

In ruling upon this question in the court below, the learned judge said to the jury:—

> "I regret that I must pass on this question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the chances of its continuance until terminated in the natural, ordinary course of events. *It is on these chances that the premium is calculated and based and the contract is founded.*"

There was no evidence in the cause which enabled the court to make this statement of fact, and in the absence of direct evidence as to the manner in which the mortality tables are prepared, it might be urged that there is reversible error in such a statement of a supposed fact; but if it be assumed that a court is entitled to refer to the manner of preparing the mortality tables as a matter of general knowledge without direct evidence, then the court was mistaken in its statement, because, in fact, it is a matter of general knowledge that the mortality tables upon which the premium is calculated and

based and the contract is founded include all deaths, including those of suicides, and this fact has been judicially noticed.

In Estabrook *vs.* Union Mutual L. I. Co., 54 Maine, 224, Appleton, C. J., said:—

> "There is, indeed, no reason why it [the policy] should not do so [cover this as well as every other risk], for the general tables of mortality, which form the basis of the calculations upon which the policy is founded, include this [suicide] as well as every other cause of death; so that the particular risk is actually insured against."

And Bliss on Life Insurance, section 239, in commenting upon the insufficiency of the usual express clauses exempting the company from liability in cases of suicide, says:—

> "If the companies continue to think it important to except from losses insured against any kind of self destruction, we believe they must make some such change in the terms of the exception inserted in their policies. The question of the propriety of any such exception is not a legal one. [The change suggested in the preceding section is clause giving to the insured in case of suicide the net reserve value.] It may be observed, however, that the argument sometimes used, that the mathematical calculations of the life insurance companies upon which their premiums are reckoned are based upon the ascertained deaths from all causes, and that therefore liability to death by self destruction is included mathematically in their premiums, would apply with equal force against the exception as to death by the hands of justice, in a duel, or in violation of law."

In Breasted *vs.* Farmers' Loan and Trust Company, 4 Hill (N. Y.), 73, the court said:—

> "It must occur to every prudent man seeking to make provision for his family by an insurance on his life, that insanity is one of the diseases that may terminate his being. It is said the defendants did not insure the continuance of the intestate's reason, nor did they in terms insure him against smallpox or scarlet fever; but had he died of either disease there is no doubt that the defendants would have been liable. They insure the continuance of life. What difference can it make to them or to him whether it is terminated by the ordinary course of disease in his bed or in a fit of delirium he ends it himself? In each case the death is occasioned by means in the meaning of the policy."

We submit that these quotations show that the reason given without evidence by the learned court upon supposed

conditions of fact was erroneous, and the second reason, which was one of legal analogy, stands upon no surer foundation.

The second reason given in the charge why there could be no recovery in case of suicide, was:—

> "It cannot be doubted that if one having a policy on his buildings insuring against fire should intentionally burn them, his act would be a defense to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders, cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insured seems to me to be as clear in the latter case as in either of the others."

We do not question that in the cases mentioned, of arson and murder, no insurance could be recovered. We think, however, that although the court below, in the hurry of the trial, failed to distinguish the present case from that of the creditor who murders his debtor upon whose life an insurance is held, that the cases are plainly distinguishable. Confusion often arises in life insurance matters from the paucity of language. The party whose life is insured is spoken of as the "insured;" so also the party who is beneficially interested in the payment of the insurance is spoken of as the "insured." There is no analogy between the relations of the parties.

It would be so contrary to conscience that he who is personally to enjoy the proceeds of a life insurance policy should accelerate the time of such enjoyment by the commission of the high crime of murder, that the law takes to itself the power of a chancellor and prevents the wrongdoer from enjoying the fruit of his crime. As was said by Mr. Justice Field, in Armstrong *vs.* Mutual Life Insurance Company, 117 U. S., 591:—

> "It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had wilfully fired."

But he whose life is insured has no beneficial or enjoyable interest to the proceeds of the life policy. The contract by

the insurance company is to pay a certain sum upon the termination of the life insured. The payment, by the terms of the policy, may be directed to any one who is interested in the continuance of the life, either relative or creditor, or it may be payable to executors and administrators, to be by them applied for the benefit of creditors and relatives as their interest may be established by law.

Hence it has become the practice of the English companies to provide expressly that if the policy be made payable or be assigned to a creditor or relative, the suicide of the one whose life is insured shall not relieve the company from liability to make payment, and the same conditions expressly protects the payment of the policy in favor of any one who has by charge or lien acquired an interest therein.

In several American cases it has been held that in an action by a beneficiary named in a life policy containing no suicide clause, the suicide of the party upon whose life the policy issued is no defense.

In the absence of a statute declaring what is public policy, or of a condition in a contract limiting its operation, it is not the function of a court to declare contracts void because of supposed public policy.

The proper limitations upon judicial power are very clearly stated in the recent opinion in Carpenter's Estate, 36 Weekly Notes, 516, where the question was whether a son convicted of murdering his father was entitled to share in the distribution of the estate under the intestate laws. The court held that he was.

In Cleaver *vs.* Mutual Reserve Fund Life Asso., 1 Queen's Bench, 147, the English Court of Appeals held :—

> "The executors of a person who has effected an insurance on his life for the benefit of his wife can maintain an action on the policy, notwithstanding the fact that the death of the deceased was caused by the felonious act of the wife. The trust created by the policy in favor of the wife, under the Married Women's Property Act, 1882, section 11, having become incapable of being performed by reason of her crime, the insurance money forms part of the estate of the insured, and as between his legal representatives and the insurers no question of public policy arises to afford a defense to the action."

Fitch *vs.* American Popular Ins. Co., 59 N. Y., 557, was a suit by a widow, to whom the policy by its terms was made payable.

Rapallo, J., said :—

> These policies are provisions made usually by persons of slender means for the benefit of their families in case of death. They sometimes devote their small savings for many successive years to paying the premiums. * * *
>
> "The refusals to charge as requested are covered by the remarks already made, and this disposes of all the material exceptions except the rejection of evidence that Fitch, the deceased, committed suicide.
>
> "The policy contained no stipulation that it would be void in case of the death of the insured by suicide. It was not taken out for the benefit of Fitch, but of his wife and children, although they were bound by his representations, and any fraud he may have committed in taking out the policy, the policy having been secured through his agency, yet they were not bound by any acts or declarations done or made by him after the issue of the policy, unless such acts were done in violation of some condition of the policy. We have examined the various grounds upon which the defendant claims that this evidence was admissible, but are of opinion that they are not sufficient."

Patrick *vs.* Excelsior Life Insurance Company, 67 Barb., 202.

This was an action on a life policy issued for the benefit of the insured's wife. The policy did not contain any clause making it void in case of the suicide of the insured. The court said :—

> "The case of Fitch *vs.* The Insurance Company, 59 N. Y., 557, has settled the doctrine that in the case of a policy for the benefit of the wife, the suicide of the insured is not a defense where there is no stipulation to that effect in the policy. This doctrine makes the question of sanity or insanity immaterial in this case, and disposes of most of the points raised by the defendants, for I do not think that the expression 'in known violation of the law of any State,' can be construed to include suicide, although suicide has been called a felony."

That no public policy prevents recovery on a policy of insurance the proceeds of which are to be used for the payment

of the debts of the insured, is shown by Moore *vs.* Woolsey, 4 Ellis & B., 243, and Jones *vs.* Consolidated Investment As. Co., 26 Beav., 256.

The only difference between the English cases and the present case is that the assured there by deed had charged the proceeds of the policy with the payment of debts. In Pennsylvania, by virtue of the statute, the proceeds pass into the hands of the executor or administrator charged with the payment of the debts.

There can be no policy of law which renders the contract of insurance void in the one case which does not apply equally to the other.

In Jones *vs.* Consolidated Investment Ass. Co., 26 Beav., 256, before Romilly, M. R.:—

> "One of the conditions of a life policy was that it should be void if the assured died by his own hand, except it should have been assigned to other parties for valuable consideration six months before his death. *Held*, that a letter to A. B., charging it with a floating balance due to him and made three years previous to the death of the assured by his own hand, was within the exception."

In White *vs.* British Empire Life Ass. Co., L. R., 7 Eq., 194, an assurance company advanced money to W. on a mortgage of real security, and on his effecting a policy on his life in their office for the amount of the loan, which was deposited with the company as collateral security. The policy contained a condition that if the assured died by his own hands, by the hands of justice, or by dueling, the policy should be void, except to the extent of any *bona fide* interest therein which at the time of such death should be vested in any other person or persons for a sufficient pecuniary or other consideration. W. committed suicide under temporary insanity while the policy was in the hands of the company. *Held*, that the company and the assured stood in the same position as if the policy had been mortgaged to any third person; that the company came within the exception in the condition, and therefore that the policy was valid to the extent of the mortgage debt due to them at the death of the insured.

Sir R. Malins, V. C.:—

"It is agreed on both sides, that in the events which have happened, if Mr. White had retained the policy in his own hands it would have been void; and that if it had been deposited for value in the hands of any third person it would have been valid to the extent of any *bona fide* interest in such third person; and the question is, whether the assurance company, having advanced money to the assured and taken a deposit of the policy as a collateral security, the company must be considered as other persons who have acquired an interest in the policy?

"In the case of Solicitors' and General Life Assurance Company *vs.* Lamb, there was a clause very similar to the one upon which the question arises in this case, and the question as to the nature and effect of such a clause was raised both before Vice-Chancellor Wood and the Lords Justices; and Vice-Chancellor Wood laid down the rule, which I think is the true rule, that such a condition is for the benefit, not of the office, but of the assured. The Vice-Chancellor said: 'The object of the condition is to increase the value of the policy to the holder, *i. e.*, in the first place, to the assured. And if that be so, I do not see how I can hold that in the absence of fraud the estate of the assured is to be deprived of the benefit intended to be given to him by the exception, merely because the mortgagee happens to be fully secured.' The same rule was adopted by the Lords Justices, who held that the condition was intended for the benefit of the assured in order to render the policy an available security.

"This condition, then, being for the benefit of the assured, and it being admitted that if he had deposited it for value with an indifferent person it would have been valid to the amount of such interest, why should the assured be in a less favorable position because the assurance company have themselves advanced him money, and taken it as a security? If the company desired that under these circumstances the assured should be in a less favorable position than if he had borrowed from a third person, they might have stipulated that the proviso should have no operation while they were mortgagees of the policy. I have heard no reason suggested why the assured should stand in a less favorable position than if he had borrowed from an indifferent person.

"But the company made no such provision, and I am of opinion that the assurance company contracted in such manner as to place them and the assured in the position of mortgagor and mortgagees; that the condition and the exception contained in it were in force when the assured died, and that the moment they agreed to take the deposit they came within the condition that the policy, to the extent of their interest, should be binding.

"The policy, therefore, being still in force to the amount of the

debt due to the assurance company, that debt must be considered as satisfied, and the securities held by the company must be re-assigned. The assurance company must pay the costs of the suit."

This is a distinct adjudication that the fact that the estate of a suicide may in substance obtain the benefit of a life insurance does not violate any rule of public policy. In any case where it is sought, as in this case, to relieve a party from the performance of a contract upon the idea that public policy forbids such performance, the substance, not the form, of the transaction is to be considered. The cases cited show that that there is no public policy recognized by the courts of England or America which prevents relatives and creditors of a suicide, and even the estate of a suicide, from receiving the proceeds or benefit of a life policy which becomes, by its terms, payable on the death of a man who in fact dies by his own hand.

If public policy does not forbid the payment of the policy when by the terms of the policy, payment is made directly by the insurance company to the creditor or relative, public policy cannot forbid when the payment is made in effect for the benefit of creditors and relatives, to be distributed among them by an executor or administrator.

The general practice of the defendant company also shows that it does not regard suicide by itself a reason for avoiding the policy upon grounds of public policy. When the suicide clause is inserted in its policies, it is in terms limited to a suicide occurring within two years after the issue of the policy.

If a policy with such a clause is enforceable in case of suicide occurring twenty years after its issue, a policy with no suicide clause is enforceable at all times, unless the company be able to defend by showing in fact that the policy was taken out with the fraudulent purpose of committing suicide.

The same principle was laid down in Jackson *vs.* Foster, 5 Jurist, 547, and the discussion in the case was over the purely technical question whether assignees in bankruptcy were within the expressed condition in the policy. A policy contained a condition that it should be void if the life insured

died by suicide, but if any third party had acquired a *bona fide* interest therein by assignment or by legal or equitable lien for a valuable consideration or a security for money, the insurance should to the extent of such interest be valid. *Held*, that assigneees in bankruptcy were not within the language of the condition.

In the Exchequer Chamber, Cockburn, C. J., said:—

> "The insurance company may be taken to have granted the insurance upon a calculation of the average duration of human life; and for that reason to have excluded from the benefit of the policy the case of death by suicide. But for this exclusion a man might insure his life with the intention of putting an end to it by his own hands. But on the other hand, it would be injurious to the interests of insurance companies if policies could be avoided whenever the assured committed suicide, even when the interest in the policy had passed to a third party, inasmuch as one of the chief advantages of a life policy, the power of making use of it as a negotiable instrument, would be destroyed. This company seems to have made a sort of compromise, and stipulated that the policy should be avoided by the suicide of the assured, except where a *bona fide* interest in the policy had passed from the assured to a third party, either by way of assignment or by way of legal or equitable lien or as a security for money."

It would tend to show that there can be no general policy of the law which would compel the insertion into life insurance contracts of a clause avoiding them upon the ground of suicide, when the statutes of certain States provide that even if the clause be written in, the fact of suicide is no defense unless the party contemplated suicide in applying for the policy. Such is the Missouri statute, enforced in L. I. Co. *vs.* Berry, 50 Fed., 511.

The laws as well as public opinion regard a suicide as an unfortunate rather than a felon.

Article I., section 19, of the Constitution of Pennsylvania provides:—

> "The estate of such persons as shall destroy their own lives shall descend or vest as in cases of natural death."

This humane provision is found in the Constitution of 1794 and every Constitution since adopted.

It would also appear that these formal differences, as to who effected the insurance and in whose favor the policy was made payable, were immaterial and not of the substance of the transaction. In the opinion of Mr. Justice Hunt, in Terry *vs.* Ins. Co., 15 Wall, already cited, he says:—

> "In the present instance, the contract of insurance was made between Mrs. Terry and the company, the insured not being in form a party to the contract. Such contracts are frequently made by the insured himself, the policy stating that it is for the benefit of the wife, and that in the event of death the money is to be paid to her. We see no difference in the cases. In each it is the case of a contract, and is to be so rendered as to give effect to the intention of the parties."

And a like opinion of the immateriality of the question whether the suit was by executor, administrator, or assignee was entertained by Judge Trunkey in his charge to the jury in Bank of Oil City *vs.* Guardian Mutual Ins. Co., Common Pleas Venango County, 6 Leg. Gaz., 348.

The action was by an assignee upon a policy in terms void if the insured died by his own hand. In course of charge the judge said:—

> "One guilty of suicide who has his life insured commits a fraud upon the company, and there can be no recovery on the policy, whether there be such a condition expressed therein or not. This fraud would defeat recovery by his assignee or by the representative of his estate."

In so far as the charge of Judge Trunkey is against us, it is mere dictum and also contrary to all the authorities, English and American. The case is cited for the purpose of showing that to the mind of Judge Trunkey there was no substantial distinction between the rights of a relative or creditor assignee and those of an executor or administrator.

These cases render it clear that the reason suggested by the House of Lords in Fauntleroy's case why the policy could not be paid in that case, have no application to the payment of a policy upon death by suicide.

In Fauntleroy's case, Amicable Society *vs.* Bolland, 4 Bligh, N. S., 240, assignees in bankruptcy sought to recover on a

policy on the life of one executed for felony—forgery on the Bank of England. The Lord Chancellor held that no recovery could be had, saying:—

> "It appears to me that this resolves itself into a very plain and simple consideration. Suppose that in the policy itself this risk had been insured against, that is, that the party insuring had agreed to pay a sum of money year by year, upon condition that in the event of his committing a capital felony, and being tried, convicted, and executed for that felony, his assignees shall receive a certain sum of money—is it possible that such a contract could be sustained? Is it not void upon the plainest principles of public policy? Would not such a contract, if available, take away one of those restraints operating on the minds of men against the commission of crimes, namely, the interest we have in the welfare and prosperity of our connections? Now, if a policy of that description, with such a form of condition inserted in it in express terms, cannot, on grounds of public policy, be sustained, how is it to be contended that in a policy expressed in such terms as the present, and after the events which have happened, we can sustain such a claim? Can we, in considering this policy, give to it the effect of that insertion which, if expressed in terms, whould have rendered the policy, as far as that condition went, at least altogether void?"

While a policy drawn in express terms to insure only against the case of suicide might be objectionable to public policy, the cases cited show that where the contract of insurance is entered into in good faith to cover the contingencies of life and death, the fact that he whose life is insured dies by his own hand does not, upon any ground of public policy, stand in the way of the payment of the policy.

If the proposition of law affirmed by the court below is sound, no contract could be made which would permit payment in case of suicide, where the policy is for the benefit of the insured. And yet experience shows that controlling circumstances render suicide one of the hazards of life against which an applicant for insurance should protect himself. For just as homicide in the eye of the law is divided into three classes, namely, justifiable, excusable, and felonious, so may suicide be divided, to wit, justifiable, as in the case of a soldier who goes to certain death in defense of his country; excusable, where the insured is insane; and felonious, when the acts of insurance and suicide are with intent to defraud

the insurer. Other illustrations of these various classes may be readily imagined. Certainly public policy would not prevent an insurance against the first two risks, and the third renders the contract void for sounder reasons than the argument of public policy.

Whether, therefore, in any given case the suicide is justifiable, excusable, or felonious is a question of fact. Is there any public policy which could forbid a contract which excludes the question of fact? Certainly a contract would be sustained which provided that suicide should not prevent recovery on the policy, it being agreed therein that the mere fact of suicide should be deemed conclusive proof of insanity, thus bringing all suicide within the class excusable.

Ætna Life Ins. Co. *vs.* Florida, 69 Fed. Rep., 932.

JOHN HAMPTON BARNES,
RICHARD C. DALE,
GEO. TUCKER BISPHAM,
For Petitioners.